



STATE OF NEW JERSEY

N J L R C

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

Judgments

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INTRODUCTION

The Commission's review of statutes concerning judgments continues the effort begun in 1989 to revise Title 2A provisions concerning the courts and the administration of civil justice. The current 32 sections include many which are outdated, unclear and superseded in practice by newer, more detailed rules. Moreover, even taken together the statutes and rules do not reflect the totality of current practice.

The Commission proposal states the processes by which a judgment or order is recorded and the process by which information concerning subsequent events that affect the judgment are added to the record. First, a copy of the whole text of the judgment or order is kept by the court. See Section 1. That assures that the detail of a judgment or order will always be available. Entry is made in the Case Docket each time a judgment or order is entered. See Section 2. The docket entry serves as notice to all parties of the existence of the judgment or order and makes the decree effective against them. A judgment or order that is for a sum of money or that affects title to real estate is recorded on the Judgment Docket. See Section 3. That docket provides notice to all persons and makes a judgment a lien against real property. See Sections 7 and 8. "While the decretal provisions of a judgment take effect ... when the judgment is entered on the civil docket, the judgment would not constitute a lien until entered on the civil judgment and order docket" Pressler, *Current N.J. Court Rules*, Comment R. 4:101. Documents constituting the subsequent history of a judgment such as executions or assignments are also indicated on the docket with the judgment. See Sections 5 and 6.

The Commission has begun a related project to revise the statutes relating to the execution of judgments. The recommendations of that project will complement the proposed revised statutes on judgments.

SECTION 1. Records

The Clerk of the Superior Court shall keep indexed copies of every judgment and order, and any other instrument in a civil action which the Administrative Director with the approval of the Chief Justice shall require, in a form acceptable to them.

Source: 2A:16-12.

COMMENT

This section clarifies the meaning of the source provision which requires the recording of judgments and orders. The difficulty is that judgment practice, case law, statutes and rules present confusing terminology, and the term "recording" is used inconsistently. The section avoids old terminology and focuses on the process required to keep records of the full text of judgments and orders. "It must be borne in mind that there are not only distinctions between signing and entering judgments, but also between filing, recording and docketing. Such distinctions must be kept clearly in focus when considering the laws of conveyancing and real property so that there will be no improper impairment of titles." *Brescher v. Gern, Dunetz, Davison & Weinstein, P.C.*, 245 *N.J. Super.* 365, 371 (App. Div. 1991).

This proposal deletes description of the methods of recording documents specified in the source provision. The mode of recording chosen may vary with technological advances so long as copies are kept and indexed.

SECTION 2. Case docket

a. The Clerk of the Superior Court shall keep a Case Docket and shall make a dated entry in it of every civil action in the Superior Court, other than in the Law Division, Special Civil Part, and every judgment, order and execution of process, and of any other instrument which the Administrative Director with the approval of the Chief Justice shall require. The entry shall state where a copy of the full judgment or order is kept.

b. The dated entry shall constitute the record of the judgment or order.

c. A judgment or order takes effect only upon entry in the Case Docket, unless the court directs otherwise in the judgment or order.

Source: New

COMMENT

This new section fills a statutory void. Law 1991, c.119, sec.4, repealed 2A:2-12 which required the Clerk of the Superior Court to "keep a book known as the civil docket..." Judgments take effect only upon entry in the civil docket, but there is no statute or rule requiring its existence. Because the "entry required by this rule [R. 4:101-3.] shall constitute the record of the judgment or order..." and because the civil docket is referred to in statutes providing for the civil judgment and order docket, a statute mandating it is desirable. The proposal changes the name from "civil docket" to "case docket."

SECTION 3. Judgment docket

The Clerk of the Superior Court shall keep a Judgment Docket and upon request and receipt of any required fee shall make a dated entry in it of the parties and their addresses and amount of the following judgments and orders:

a. Any judgment or order for payment of a fixed total amount of money entered from the Superior Court except from the Special Civil Part, including

(1) a judgment or order to pay a fixed total amount of money for counsel fees and other fees or costs; and

(2) a judgment or order to pay a fixed total amount of money as arrearages resulting from failure to make periodic payments.

b. Any judgment or order affecting title to or a lien upon real or personal property or for conveyance or release of real property.

c. Upon filing of a statement required by 2A:18-32 et seq., any judgment of the Special Civil Part of the Law Division.

d. Upon written request pursuant to 2B:12-26, any municipal court judgment assessing a penalty.

e. Any certificate or lien filed by a State or county officer or agency required by law to be docketed.

Source: 2A:16-11, R. 4:101-4.

COMMENT

This section brings together the vital functions of the civil judgment and order docket in current practice without repeating the details listed in the relevant court rules. The proposal changes the name of the docket from "civil judgment and order docket" to "judgment docket." Subsection (a) retains the additions of the 1981, 1982 and 1983 amendments concerning counsel fees, periodic payments and arrearages. As a result, the subsection covers any kind of judgment for a sum certain. It does not include a judgment ordering future periodic payments, but it does include a judgment for a specific amount due immediately even if the amount is the result of overdue periodic payments. Subsections (c) and (d) add judgments of the Special Civil Part and the municipal court in accordance with their respective statutes. Subsection (e) reflects the requirement that certain agencies file statutory liens with the Superior Court. Examples of statutes encompassed by the subsection are 30:4C-29.2 (Division of Youth and Family Services lien) and 2A:158A-17 (Public Defender lien). See also *Rule* 4:101-4.

SECTION 4. Address of judgment holder

The Clerk shall enter the address of the holder of a judgment with each judgment entered in the Judgment Docket. A judgment holder shall file a new address with the Clerk promptly after each change in address.

Source: New

COMMENT

While this section is new, with section 8(b) below, it enacts the substance of Section 13 of the Fair Foreclosure Act, L. 1995 c.244.

SECTION 5. Attachments and execution of process

The Clerk shall enter in the Judgment Docket, if the judgment is entered there, and otherwise in the Case Docket:

a. Any attachments, giving the names of plaintiff and defendant; and the time when, and amount for which, writ of attachment issued; and

b. Notation of any return showing execution of process resulting in full or partial satisfaction of the judgment.

Source: 2A:16-11

COMMENT

Rule 4:101-2(b) contains the same requirements as those in subsection (a). The Commission adds this provision because docketing of attachments as searchable records should be statutorily required.

SECTION 6. Assignment, subordination or release of the lien, warrant to satisfy, satisfaction

The Clerk shall enter in the Judgment Docket, if the judgment is entered there, and otherwise in the Case Docket, notation of any assignment of, subordination or release of the lien of, warrant to satisfy, and satisfaction of, any judgment.

a. Assignment. An assignment of a judgment shall be in writing, and acknowledged or proved as required for conveyance of real estate.

b. Subordination or release of lien of judgment. A subordination or release of the lien of judgment shall contain a description of the property as to which the judgment lien is to be subordinated and shall be acknowledged or proved as required for conveyance of real estate.

c. Satisfaction. Satisfaction shall be (1) by order of the court on motion after receipt of money paid into court; (2) upon receipt from the satisfied party of an acknowledged satisfaction or warrant directing entry of satisfaction; (3) upon the filing of a warrant or the satisfied return by the sheriff or other officer of an execution issued on a judgment; or (4) upon order of the court on motion of the party making satisfaction. A creditor that receives full satisfaction of a judgment shall enter satisfaction on the record or deliver a warrant to satisfy to the debtor. A creditor that fails to enter satisfaction or deliver a warrant within 30 days after written request by the debtor shall be liable to the debtor for \$100 and, in addition, for any loss caused to the debtor by the failure.

Source: 2A:16-15, 2A:16-41, 2A:16-44, 2A:16-45, 2A:16-46, 2A:16-47, 2A:16-48.

COMMENT

In subsection (b) subordination of the lien of judgment more accurately describes the practice whereby a judgment creditor agrees that the lien against the debtor's real property will be inferior to a loan taken by the debtor and secured by a mortgage covering the same property than does the current term "postponement of lien of judgment."

In subsection (c) the proposal streamlines the four source provisions. The procedural details are in *Rules* 4:48-3 and 4:48-2. The subsection makes clear the duty of a creditor that receives full satisfaction to act to assure that the docket shows that the judgment has been satisfied. The penalty for failing to act is based on 12A:9-404 which penalizes failure to remove security interests under the Uniform Commercial Code.

SECTION 7. Judgment lien; judgment as conveyance

a. A Superior Court judgment or order for the payment of a fixed total amount of money shall be a lien on real estate from the time it is entered in the Judgment Docket.

b. When the party against whom a Superior Court judgment is entered for conveyance or release of real estate or an interest in it, does not comply by the time specified

in the judgment, or within 15 days after entry of judgment if no time is specified, the judgment shall act as the conveyance or release without further order of the Court.

Source: 2A:16-1, 2A:16-7.

COMMENT

Subsection (a) is based upon 2A:16-1.: "No judgment of the superior court shall affect or bind any real estate, but from the time of the actual entry of such judgment on the minutes or records of the court." The proposal, written in the affirmative, reflects contemporary practice by substituting "Judgment docket" for "minutes or records of the court." Liens resulting from "judgments and orders for the payment of money" take effect only when the judgment or order is entered upon the civil judgment and order docket in Trenton. "While the decretal provisions of a judgment take effect pursuant to *R. 4:47* when the judgment is entered on the civil docket, the judgment would not constitute a lien until entered on the civil judgment and order docket pursuant to this rule." Pressler, *Current N.J. Court Rules*, Comment 1 on *R. 4:101*.

Subsection (b) streamlines the language of its source provision.

SECTION 8. Judgment Docket as notice

a. Entry of an instrument in the Judgment Docket serves as notice to all persons of that instrument.

b. Entry of the address of a judgment holder in the Judgment Docket serves as notice to all persons of the proper address for which notification of matters concerning the judgment.

Source: New

COMMENT

While subsection (a) is new, the current provisions present this crucial function of the Judgment Docket in a generalized manner. Section 2A:16-42 states that "The record of an assignment of a judgment shall, from the time the assignment is left for record, be notice to all persons concerned that such judgment is so assigned...." This subsection explicitly states that the notice applies to all instruments entered in the Judgment Docket. This subsection, like its source, makes docketing alone a prerequisite to notice. While the next section requires that a docketed judgment be indexed, a mistake in indexing does not affect the power of a docketed judgment. Cf. *Howard Sav. Bank v. Brunson*, 244 *N.J. Super.* 571 (Ch. Div. 1990).

Subsection (b), with Section 4 above, enacts the substance of Section 13 of the Fair Foreclosure Act, L. 1995 c.244.

SECTION 9. Indexes

The Clerk shall maintain an alphabetical debtor index of the Judgment Docket and other suitable alphabetical indexes of judgments, assignments of judgments, subordinations or releases of the liens of judgments, or warrants to satisfy judgments, in accordance with the Rules of Court.

Source: 2A:16-16

COMMENT

The proposal streamlines the source provision.

SECTION 10. Security for payment of judgment; order discharging real estate from lien

a. If a person, in appealing a Superior Court judgment, deposits with the Clerk of the Court an amount which the Court deems sufficient as security for payment of the amount finally to be determined to be due, the Court, by order, may discharge appellant's real estate from the lien of the appealed judgment.

b. The deposited amount shall be subject to the lien of the appealed judgment and of any later judgment recovered. The Clerk shall retain the deposit until final determination of the action.

c. When the order has been entered in the Case Docket and the deposit made, the Clerk shall enter the order following the judgment entry in the Judgment Docket.

Source: 2A:16-3.

COMMENT

Subsection (c) changes the entry in the docket from a phrase and a date to the order of discharge itself.

SECTION 11. Offset against judgment of taxes, etc., due municipality

When a person recovers a judgment against a municipality to which the person is or becomes personally indebted before satisfaction of the judgment, the municipality may apply for an order to offset the personal indebtedness against the judgment.

Source: 2A:16-8.

COMMENT

2A:16-8 became effective on January 1, 1952. Through 1980, our courts did not deal with the statute, but had construed the predecessor statute, *R.S. 2:27-255*, authorizing an offset only when the taxpayer "is indebted to the municipality for taxes." "A tax against real estate is not a debt of the owner; it is not founded on a contract express or implied but is an imposition against the property and no personal liability attaches." *Francis Realty Co. v. Newark*, 16 *N.J. Misc.* 328, 330 (Essex Co. Cir. Ct. 1938). "The current statute may be regarded as having adopted the holding of *Francis Realty Co. v. Newark, supra.*" *Garden State Racing Ass'n v. Tp. of Cherry Hill*, 1 *N.J. Tax* 569, 578 (Tax Ct. 1980). In 1982, the Tax Court concluded that as the "Legislature has provided the municipality with the procedure whereby it can collect unpaid property taxes ... it would be improper to expand such procedures to include the right of offset." *Seatrains Lines v. Edgewater*, 4 *N.J. Tax* 378, 385 (Tax Ct. 1982), *aff'd* 192 *N.J. Super.* 535 (App. Div. 1983). The appellate judgment was summarily reversed, 94 *N.J.* 548 (1983), following passage of Senate Bill No. 3037, L.1983, c.137, which authorized a municipality to offset a refund of real property taxes against delinquent taxes owed on the same property. The Committee Statement emphasized that the "bill is intended to apply solely to property taxes, and does not include other local assessments or charges which may also be recovered through civil action against a property owner personally." A new section was added to Title 54 stating that real property taxes generally do not constitute "a personal debt of the owner of the property against which the taxes are assessed and levied." 54:4-135.

The proposal applies only to personal indebtedness, thereby excluding property taxes. Examples of "municipal charges or assessments for which the owner of the lands assumes a personal liability" include sewerage service charges and water and sewage disposal charges. "The basis for such liability is that the municipal service rendered is founded on contract." *Garden State Racing Ass'n, supra* at 576-577.

SECTION 12. Cancellations following discharges in bankruptcy

a. Any time after a debtor has received a discharge in bankruptcy and the period allowed by federal bankruptcy law for revocation of the discharge has elapsed, if a judgment is specifically listed in the discharge, the debtor may file a copy of the discharge with the Clerk of the Superior Court. On receipt of the discharge, the clerk shall cancel the judgment on the record of judgment, giving the date of entry of the discharge order.

b. Any time after a debtor has received a discharge in bankruptcy and the period allowed by federal bankruptcy law for revocation of the discharge has elapsed, the debtor may apply, upon proof of discharge, to the court which rendered judgment against the debtor, or to the court where it became a judgment by docketing, for an order directing the judgment to be canceled of record.

c. If it appears at a hearing that the debtor has been discharged from payment of the judgment or the debt upon which the judgment was recovered, the court shall order the judgment to be canceled of record. On receipt of the order, the clerk shall cancel the judgment on the record of judgment, giving the date of entry of the discharge order.

d. The discharged judgment may be used as a set-off in any action in which it otherwise could be used. In all other respects the judgment shall be without force or validity.

Source: 2A:16-49.1.

COMMENT

Decisions interpreting this statute have found that the statute "was enacted as an ancillary remedy for discharge of judgments, within the state court system, to assure that judgments intended to be discharged under federal bankruptcy law would not continue to remain on record, thereby requiring payment at some time in the future." *Party Parrot, Inc. v. Birthdays & Holidays, Inc.*, 289 N.J. Super. 167, 174 (App. Div. 1996); see also *Matter of Arevalo*, 142 B.R. 111, 112 (Bkrcty, D.N.J. 1992) ("A discharge in bankruptcy, in and of itself, does not extinguish valid liens on property of a debtor."). The intent of the statute and its scope under the Bankruptcy Code are explained in *Associates Commercial v. Langston*, 236 N.J. Super. 236, 240-241 (App. Div. 1989). The proposal streamlines the source provision which figures prominently in both state and federal opinions.

The new subsection (a) reflects the practice of accepting a discharge for filing without a court order when the discharge lists the judgment specifically by number. Subsections (a) and (b) also delete the reference in the source statute to a one-year period after discharge as the time for filing. Instead, they refer to the time provided by the Bankruptcy Code for revocation of discharge. In most circumstances that period is now one year, but it is extended to the end of the bankruptcy matter in a few cases. 11 U.S.C.A. §727(e). This change in reference implements the purpose to allow cancellation of the judgment only after a discharge in bankruptcy is final.

Section 13. Ex parte entry of judgment on written settlement agreement

a. A judgment may be entered on a written agreement which consents to the entry of judgment only as provided in this section. Notice of the application for entry of judgment shall be given to the defendant in the form required by the Rules of Court for notice of application for entry of default judgment.

b. The written agreement consenting to entry of judgment may be executed only after the acts or omissions of defendant have created a cause of action against the defendant for the amount of the judgment.

c. The application for entry of judgment shall be supported by an affidavit of the facts on which the judgment is based.

d. The agreement shall authorize entry of judgment for a specific sum or for a sum to be calculated in a manner provided in the agreement.

e. The agreement may authorize immediate entry of judgment or it may impose new obligations on the defendant and condition entry of judgment upon failure to comply with its terms.

COMMENT

Judgment by confession has existed in New Jersey practice for 175 years. It occurs when a debtor permits a creditor to enter judgment against the debtor by a written statement without institution of legal proceedings. Historically, statutes regulated confession of judgment practice. Judge Brennan stated that judgments "by bond and warrant of attorney, without institution of suit, derive all their efficacy from statutory law and strict compliance with statutory requirements is necessary." *Hickory Grill, Inc. v. Admiral Trading Corp.*, 14 N.J. Super. 1, 5 (App. Div. 1951). However, the concept of confession of judgment was not created by statute, and over the years, many of the statutes regulating confessions of judgment were not re-enacted. Vestiges remain in Title 2A (2A:16-6, -9, -13); most statutes outside Title 2A which mention confession of judgment prohibit or restrict their use. 39:6-72 (Settlement of actions against motorist); 12A:3-112 (Terms and omissions not affecting negotiability of an instrument); 2A:50-6 (Bonds or notes where a mortgage on real estate may be given for the same debt; notice of proposed judgment by confession or action); 38:23C-16 (Sale of property during period of military service); 42:1-9 (Uniform Partnership Law).

Since 1969, the most important regulation of confessions of judgment has been by court rule. The Rule requires that before judgment is entered, the debtor must receive notice of the date that the confession will be entered and the creditor must produce proof of the amount due. "While the rule does not wholly eliminate judgments by confession, it does eliminate their most objectionable feature by requiring notice to be given to the defendant before entry of the judgment." *Pressler, supra*, Comment, R₂ 4:45-2. The confession of judgment no longer operates as a waiver to the debtor's defenses; that was its original appeal to creditors. There is scant case law since the 1969 rule revision, but the cases show a continued reluctance to allow confessions of judgment to be used to foreclose defenses to a claim. *First Mutual Corp. v. Gramercy & Maine, Inc.*, 176 N.J. Super. 428, 441 (Law Div. 1980), *United Pacific Ins. Co. v. Lamanna's Estate*, 181 N.J. Super. 149, 160 (Law Div. 1981).

The classic confession of judgment situation is one in which the debtor executes a confession of judgment along with a promissory note. This "cognovit note" allows the creditor to have judgment entered against the debtor if he misses a payment without notice to the debtor or any defense by him. This kind of confession of judgment rarely occurs now because of the 1969 revision of R₂ 4:45-2; they may be invalid as violations of the "due process" clause of the Fourteenth Amendment to the Constitution. See *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 178 (1972). The Commission found that use of confession of

judgment is legitimate in the limited context of settlements of litigation. In such a situation, a person settles a claim with an agreement in which the defendant admits liability and provides that if the defendant does not fulfill his obligations under the settlement, the plaintiff may use the confession to have judgment entered without proof of the claim. This kind of confession of judgment was found constitutional in *D. H. Overmyer Co. v. Frick Co.*, *supra*. This section allows the use of judgment by consent on settlement agreement but regulates it strictly. It permits execution of an agreement only after there has been a default or other action by the debtor that would form the basis for a judgment. It eliminates the use of a warrant of attorney by requiring that the defendant make a written agreement supported by an affidavit of the facts on which the judgment consented to is based. However, the Commission proposal allows the most common and appropriate current use of confessions of judgment. It permits a person to settle a claim by reaching an agreement that confesses liability and allows a judgment to be entered if the debtor does not make certain future payments. Such an agreement complies with subsection (b) since it is executed after the acts that formed the basis of the claim have occurred. There may be disputes as to whether the debtor has failed to comply with the agreement and therefore whether the creditor may seek judgment on the confession. Those disputes do not involve the basis of the claim but are relevant in determining whether the application for judgment on the confession should be granted. The debtor will have a fair opportunity to raise these issues; the section requires that notice be given to the debtor of the application for entry of the judgment.

The approach taken by the section differs from that taken by Court Rules. Court Rules distinguish between confessions of judgment controlled by *R. 4:45-2* and consent judgments controlled by *R. 4:42-1*. The Rules place severe restrictions on the entry of a judgment based on a confession of judgment. While these restrictions are not identical to those in Section 13, they serve the same purposes. However, where a complaint has been filed, there are no restrictions on the use of a signed consent judgment. *State v. Cruse*, 275 *N.J. Super.* 324 (App.Div. 1994). Notice need not be given to the defendant by service of the complaint or otherwise. *R. 4:42-1(d)*. While both *R. 4:42-1* and *Cruse* seem to contemplate that the consent judgment be executed after the accrual of the cause of action, neither requires it. The same document that would involve notice, hearing, and affidavits if used as a confession of judgment under *R. 4:45-2* would suffice alone as a basis for judgment as a consent judgment under *R. 4:42-1*. The Commission decided that whether a document was used alone, as a confession of judgment, or coupled with a complaint, as a consent judgment, the same issues were involved, and the same restrictions should apply. Section 13 reflects that unitary approach.